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December 30, 1992

92-195

OUR FILE NO.  
0250-120-63

Ms. Donna R. Searcy  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**RECEIVED**

**DEC 30 1992**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Ms. Searcy:

Transmitted herewith, on behalf of Sarasota-FM, Inc., Gator Broadcasting Corporation, and Heart of Citrus, Inc., are an original and four copies of their "Motion to Stay" in the above-captioned proceeding.

Please contact the undersigned directly if there are any questions concerning this matter.

Sincerely yours,



David G. O'Neil

DGO:do  
Enclosures

No. of Copies rec'd 074  
List A B C D E

Before The  
**Federal Communications Commission**  
Washington, D.C. 20554

In The Matter Of )

Amendment of Section 73.202(b) )  
FM Table of Allotments )  
FM Broadcast Stations )  
(Beverly Hills, Florida) )

MM Docket No. 92-195  
RM-7146

**RECEIVED**

**DEC 30 1992**

TO: Chief, Allocations Branch  
Policy and Rules Division

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Motion for Stay**

Sarasota-FM, Inc. ("SFI"), licensee of FM Radio Broadcast Station WSRZ, Sarasota, Florida; Gator Broadcasting Corporation ("Gator"), licensee of FM Radio Broadcast Station WRRX, Micanopy, Florida; and Heart of Citrus, Inc. ("Heart"), licensee of FM Radio Broadcast Station WXOF, Beverly Hills, Florida, hereby request that the Commission suspend any action on the above captioned proceeding for thirty (30) days to permit the parties to reach an accord with regard to the pending proposals in this proceeding. A temporary stay of this proceeding will permit the parties to resolve this proceeding to the satisfaction of each party in the proceeding, will not harm other parties in the proceeding, and will conserve the resources of the Commission and the parties in this proceeding. In support thereof, the following is hereby shown:

1. SFI/Gator and Heart have had pending before the Commission petitions for rule making since August and September, 1989, respectively. In September, 1992, the Commission issued a *Notice of Proposed Rule Making*, 7 FCC Rcd 5910 (1992) (Chief, Allocations

Branch) with regard to Heart's rule making petition. SFI/Gator filed a counterproposal in the proceeding, incorporating their pending petition for rule making and other proposals to permits upgrades for each party in the proceeding. Heart also filed a counterproposal in this proceeding. Because SFI/Gator and Heart propose to upgrade WXOF on different channels, their counterproposals are mutually exclusive.

2. Over the past several months counsel for SFI, Gator, and Heart have discussed the possibility of adoption of the Second Alternative contained in SFI/Gator's counterproposal. Adoption of the Second Alternative would permit the Commission to upgrade the facilities of WSRZ, WRRX, WXOF, and FM Radio Broadcast Station WLVU, Holiday, Florida. Counsel for SFI, Gator, and Heart met on Tuesday, December 22, 1992, to reach an agreement with regard to the Second Alternative. The parties agreed to pursue the Second Alternative and to this end Heart is attempting to locate an existing tower from which to operate WXOF on Channel 292C3. The parties also discussed what constitutes appropriate reimbursement to Heart for the reasonable and prudent expenses associated with operating WXOF on Channel 292C3. Sufficient progress was made at this meeting that counsel for SFI, Gator, and Heart hereby request that the Commission suspend further action on this proceeding for thirty (30) days in order to permit the parties to resolve this matter.

3. A temporary stay will permit the parties to agree upon a proposal that the Commission has already indicated serves the public interest. Favorable action on the Second Alternative contained in SFI/Gator's counterproposal would resolve favorably for all affected parties a significant portion of the many pending proposals for service

improvement in central Florida that have been advanced in MM Docket No. 87-455. In addition, favorable action would render moot pending pleadings in MM Docket No. 87-455, thereby permitting the Commission to substitute Channel 256A for Channel 292A at Avon Park and modify the license of WWOJ accordingly. This in turn would permit the Commission to initiate a rule making proceeding to upgrade the facilities of FM Radio Broadcast Station WGUL, New Port Richey, Florida.<sup>1</sup> In addition, granting the Second Alternative would eliminate a new shortspacing between WRRX and WXTB, Clearwater, Florida, proposed by the licensee of WXTB, Great American Television and Radio.

4. Favorable Action on the Second Alternative would conserve the Commission's resources in considering SFI's pending *Application for Review, Motion for Stay, and Opposition to Order to Show Cause and Request for Evidentiary Hearing and Other Relief* in MM Docket No. 87-455. The alternative is delayed service to the public and protracted litigation among proponents of upgrades for rival stations.

5. As demonstrated above, SFI, Gator, and Heart have satisfied the requirements for a temporary stay of this proceeding. *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Assn v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). To wit, SFI, Gator, and Heart have demonstrated that: 1) they are likely to succeed on the merits because the Second Alternative serves the public interest; 2) failure to grant the stay will force SFI, Gator, and Heart to continue to advocate their respective counterproposals with the result of additional litigation;

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<sup>1</sup> RM-6869.

3) a temporary stay will not harm the other parties in this proceeding and in fact will expedite Commission consideration of matters in this proceeding, MM Docket No. 87-455, and RM-6869; and 4) granting a temporary stay will permit SFI, Gator, and Heart to reach an agreement with regard to this proceeding which will conserve the resources of the Commission and the parties in this proceeding.

WHEREFORE, for the foregoing reasons, Sarasota-FM, Inc., Gator Broadcasting Corporation, and Heart of Citrus, Inc. respectfully request that the Commission grant their request for a stay of this proceeding for thirty (30) days in order for the parties to resolve this proceeding.

Respectfully submitted,

**Sarasota-FM, Inc.**

  
Michael H. Bader  
Theodore D. Kramer  
David G. O'Neil

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**Heart of Citrus, Inc.**

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ITS ATTORNEY

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December 30, 1992

# CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered\*, to the following:

\*Michael C. Ruger, Chief  
Allocations Branch, Policy & Rules Division  
Federal Communications Commission  
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Room 8318  
Washington, D.C. 20554

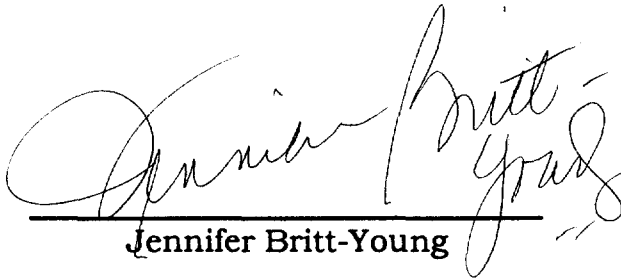
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Roper Broadcasting, Inc.



Jennifer Britt-Young

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\*Hand Delivered

December 30, 1992